

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of SHIANN OLIVEA SANDERS
and SETH MCKENLEY SANDERS, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

TAMMY LEE CURRY,

Respondent-Appellant,

and

JAMES CURRY,¹

Respondent.

UNPUBLISHED

August 16, 2005

No. 258765

Wayne Circuit Court

Family Division

LC No. 01-403430

Before: Zahra, P.J., and Cavanagh and Owens, JJ.

PER CURIAM.

Respondent Tammy Lee Curry appeals as of right from the order of the trial court terminating her parental rights to her minor children pursuant to MCL 712A.19b(3)(c)(i) (conditions that led to adjudication continue to exist), (g) (failure to provide proper care), and (j) (reasonable likelihood that child will be harmed if returned to parent). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Respondent contends that the trial court erred in finding that clear and convincing evidence supported termination under the statute. Respondent claims the conditions that led to adjudication had been rectified and there was no evidence that respondent would be unable to care for the children within a reasonable time. Respondent further claims there was also no

¹ James Curry, the children's maternal uncle, was mistakenly listed as Seth's father in the trial court's termination order.

evidence that the children would be harmed if returned to her. Further, the children's best interests would not be served by termination of respondent's parental rights.

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1993). This Court reviews the trial court's findings of fact for clear error. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). A finding is clearly erroneous if, although there is evidence to support it, the reviewing court on the entire record is left with a definite and firm conviction that a mistake has been made. *Id.* Regard is given to the special ability of the trial court to judge the credibility of the witnesses who appeared before it. *Id.*

Contrary to respondent's contentions, ample evidence existed on the record to support the trial court's decision. When Shiann was removed from the home she was in poor health, apparently as a result of respondent's neglect. Respondent's home was in poor repair, the utilities were sometimes turned off, and water flooded the basement. Various people were living in the home and using the bathroom facilities, although for a time there was no water service. Respondent would send an older child outdoors to collect snow in a can for cooking. Respondent was permitting others to engage in illegal drug use in the home. Although respondent later improved the condition of the home, there was never a demonstration that respondent was able to consistently care for the children or that respondent was drug free. In the three years that the case was pending before the trial court, respondent failed to consistently participate in drug screens and failed to consistently provide adequate housing. Each time the children were placed with respondent, they were returned to the agency's care in need of medical attention.

Respondent correctly asserts that she complied with some aspects of the parent agency agreement. But respondent failed to demonstrate that she could provide stable, substance-free care for the children long term or that she would be able to do so within a reasonable time given the ages of the children. The trial court, therefore, did not err in finding that the statutory grounds for termination were established by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

Though not argued separately, respondent notes that termination of her parental rights was contrary to the best interests of the children. Once the petitioner has established a statutory ground for termination by clear and convincing evidence, the trial court is required to order termination of parental rights unless the court finds from evidence on the whole record that termination is clearly not in the child's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 353; 612 NW2d 407 (2000). The trial court's decision regarding the child's best interests is reviewed for clear error. *Id.*

In this case, the record demonstrates that each time the children were placed in respondent's care they were later discovered to be in poor health. Respondent made little progress in the three years that services were provided to her and at the time of termination had yet to demonstrate that she would be able to care for the children either financially or physically. Respondent also failed to demonstrate her sobriety by failing to participate in drug screening, and, indeed, her loss of her employment and her home, together with her refusal to participate in drug screens, lend credence to the suspicion that she was using illegal drugs. Though respondent

and the children appeared to have a pleasant rapport, they had not bonded with respondent as their caretaker. The trial court properly concluded that termination was not clearly contrary to the best interests of the children.

Affirmed.

/s/ Brian K. Zahra

/s/ Mark J. Cavanagh

/s/ Donald S. Owens